

16B C.J.S. Constitutional Law § 1453

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Constitutional Law

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

F. Regulation of Employment

2. Public Office or Employment

b. Eligibility

§ 1453. Eligibility based on residence

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West's Key Number Digest

West's Key Number Digest, Constitutional Law  3593, 3594

A requirement of residence during employment by a county or municipality is valid under the traditional equal protection test; durational residency requirements, which require residency for a certain period prior to applying for office or employment, are generally subjected to the more rigorous strict scrutiny standard.

A county or municipal employee residence requirement bears a rational relationship to one or more legitimate state purposes and is constitutional under the traditional equal protection test.¹ Residency requirements are rationally related to a legitimate interest of having employees, such as police officers, available for emergencies on short notice,² as well as an interest in those paid by the public residing and spending their money within the jurisdiction.³ Employees may be granted exemptions from residency requirements in situations that accord with the requirements of equal protection.⁴

While a durational residence requirement may be upheld as furthering a state's legitimate interests in ensuring that board members are familiar with local problems,⁵ or that a candidate for state senator is familiar with his or her constituency, voters are familiar with the candidate's character, and frivolous candidacies are deterred,⁶ it has been held elsewhere, in view of the constitutional right to travel,⁷ that durational residency requirements are subject to a compelling state interest test.⁸

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Footnotes

1 U.S.—Wright v. City of Jackson, Mississippi, 506 F.2d 900 (5th Cir. 1975).
Ariz.—Babbitt v. Asta, 25 Ariz. App. 547, 545 P.2d 58 (Div. 2 1976).
Iowa—Clinton Police Dept. Bargaining Unit v. City of Clinton, 464 N.W.2d 875 (Iowa 1991).
Minn.—Guttu v. City of East Grand Forks, 294 N.W.2d 735 (Minn. 1980).
Mo.—Slater v. City of St. Louis, 548 S.W.2d 590 (Mo. Ct. App. 1977).
W. Va.—Morgan v. City of Wheeling, 205 W. Va. 34, 516 S.E.2d 48 (1999).
Rule applicable only to the newly hired
U.S.—Wardwell v. Board of Ed. of City School Dist. of City of Cincinnati, 529 F.2d 625 (6th Cir. 1976).
Only applicable to high level officials
Kan.—Lines v. City of Topeka, 223 Kan. 772, 577 P.2d 42 (1978).
Police officers; intermediate scrutiny
Requirement that police officers live within the city survived scrutiny, even if an intermediate standard of review was applied, since the requirement was a reasonable exercise of the city's discretion to conduct its own affairs and was not overridden by an interest in obtaining or continuing employment.
Conn.—Carofano v. City of Bridgeport, 196 Conn. 623, 495 A.2d 1011 (1985).
2 U.S.—Gusewelle v. City of Wood River, 374 F.3d 569 (7th Cir. 2004).
Ga.—Dixon v. City of Perry, 262 Ga. 212, 416 S.E.2d 279 (1992).
N.H.—Seabrook Police Ass'n v. Town of Seabrook, 138 N.H. 177, 635 A.2d 1371 (1993).
3 N.Y.—Winkler v. Spinnato, 72 N.Y.2d 402, 534 N.Y.S.2d 128, 530 N.E.2d 835 (1988).
4 Mass.—Town of Milton v. Civil Service Commission, 365 Mass. 368, 312 N.E.2d 188 (1974).
Mich.—Detroit Police Officers Ass'n v. City of Detroit, 385 Mich. 519, 190 N.W.2d 97 (1971).
Miss.—Hattiesburg Firefighters Local 184 v. City of Hattiesburg, 263 So. 2d 767 (Miss. 1972).
N.C.—Maines v. City of Greensboro, 300 N.C. 126, 265 S.E.2d 155 (1980).
5 Tenn.—Civil Service Merit Bd. of City of Knoxville v. Burson, 816 S.W.2d 725 (Tenn. 1991).
6 W. Va.—State ex rel. Harden v. Hechler, 187 W. Va. 670, 421 S.E.2d 53 (1992).
7 § 786.
8 Conn.—Bruno v. Civil Service Com'n of City of Bridgeport, 192 Conn. 335, 472 A.2d 328 (1984).
Alaska—State v. Wylie, 516 P.2d 142 (Alaska 1973).
Wash.—Eggert v. City of Seattle, 81 Wash. 2d 840, 505 P.2d 801 (1973).